

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1632

93RD GENERAL ASSEMBLY

Reported from the Committee on Utilities, March 1, 2006 with recommendation that House Committee Substitute for House Bill No. 1632 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 7, 2006 with recommendation that House Committee Substitute for House Bill No. 1632 Do Pass with no time limit for debate.

Taken up for Perfection April 4, 2006. House Committee Substitute for House Bill No. 1632 ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

4830L.06P

AN ACT

To amend chapter 570, RSMo, by adding thereto one new section relating to obtaining, receiving, and selling telephone and cellular phone records without consent, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 570, RSMo, is amended by adding thereto one new section, to be known as section 570.222, to read as follows:

570.222. 1. As used in this section the following terms shall mean:

(1) "Procure", in regard to a telephone record means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration;

(2) "Telecommunications carrier", any corporation providing telecommunications service as defined in section 386.202, RSMo. For purposes of this section only, the definition of telecommunications carrier includes a commercial mobile radio service provider defined in 47 U.S.C. 332(d);

(3) "Telephone record", any information retained by a telecommunications carrier that relates to the telephone numbers dialed by the customer or the incoming numbers of calls directed to a customer, or other data related to such calls typically contained on a

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 customer telephone bill such as the time the call started and ended, the duration of calls,
12 the time of day calls were made and any charges applied. For purposes of this section any
13 information collected and retained by or on behalf of customers utilizing Caller I.D., or
14 other similar technology, does not constitute a telephone record.

15 2. A person commits the crime of obtaining, receiving, or selling a telephone record
16 without consent if such person:

17 (1) Knowingly procures, attempts to procure, solicits, or conspires with another to
18 procure, a telephone record of any resident of this state without the authorization of the
19 customer to whom the record pertains; or

20 (2) By fraudulent, deceptive, or false means:

21 (a) Knowingly sells, or attempts to sell, a telephone record of any resident of this
22 state without the authorization of the customer to whom the record pertains; or

23 (b) Receives a telephone record of any resident of this state knowing that such
24 record has been obtained without the authorization of the customer to whom the record
25 pertains or by fraudulent, deceptive, or false means.

26 3. Obtaining, receiving, or selling a telephone record without consent is a felony
27 punishable as follows:

28 (1) A fine of not less than five hundred dollars nor more than one thousand dollars
29 or imprisonment for not more than two years, or both such fine and imprisonment if the
30 violation of subsection 2 of this section involves a single telephone record of a resident of
31 this state;

32 (2) A fine of not less than one thousand dollars nor more than five thousand dollars
33 or imprisonment for not more than five years, or both such fine and imprisonment if the
34 violation of subsection 2 of this section involves two to ten telephone records of a resident
35 of this state;

36 (3) A fine of not less than five thousand dollars and not more than ten thousand
37 dollars or imprisonment for not more than ten years, or both such fine and imprisonment
38 if the violation of subsection 2 of this section involves more than ten telephone records of
39 a resident of this state.

40 4. No provision of this section shall be construed so as to prevent any action by a
41 law enforcement agency, department of corrections, or state agency with jurisdiction
42 over telecommunications companies as defined in section 386.020, RSMo, or any officer,
43 employee, or agent of such agency, to obtain telephone records in connection with the
44 performance of the official duties of the agency.

45 **5. No provision of this section shall be construed to prohibit a telecommunications**
46 **carrier from obtaining, using, disclosing, or permitting access to any telephone record,**
47 **either directly or indirectly through its agents:**

48 **(1) As otherwise authorized by law;**

49 **(2) With the lawful consent of the customer or subscriber;**

50 **(3) As may be necessarily incident to the rendition of the service or to the protection**
51 **of the rights or property of the provider of that service, or to protect users of those services**
52 **and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such**
53 **services;**

54 **(4) To a governmental entity, if the telecommunications carrier reasonably believes**
55 **that an emergency involving immediate danger of death or serious physical injury to any**
56 **person justifies disclosure of the information; or**

57 **(5) To the National Center for Missing and Exploited Children, in connection with**
58 **a report submitted thereto under section 227, RSMo, of the Victims of Child Abuse Act of**
59 **1990;**

60 **(6) No provision of this section shall apply to or expand upon the obligations and**
61 **duties of any telephone company, its agents, employees or contractors to protect telephone**
62 **records beyond those otherwise established by federal or state law, including but not**
63 **limited to provisions governing Customer Proprietary Network Information in section 222**
64 **of the Communications Act of 1934, as amended, 47 U.S.C. 222 and regulations**
65 **promulgated thereunder.**

66 **6. In a civil action, a customer or telecommunications carriers or both whose**
67 **telephone records were procured, sold, or received in violation of subsection 2 of this**
68 **section may recover from the person or entity that violated subsection 2 of this section such**
69 **relief as may be appropriate including, but not limited to, the following:**

70 **(1) Such preliminary and other equitable or declaratory relief as may be**
71 **appropriate;**

72 **(2) Damages as described in subsection 7 of this section; and**

73 **(3) Reasonable attorney fees and other litigation costs reasonably incurred.**

74 **7. The court may assess as damages in a civil action under this section the sum of**
75 **the actual damages suffered by the plaintiff and any profits made by the violator as a result**
76 **of the violation, but in no case shall a person entitled to recover receive less than the sum**
77 **of one thousand dollars. The court may assess as punitive damages an amount not to**
78 **exceed ten times the amount awarded for actual damages and illicit profit. In the case of**
79 **a successful action to enforce liability under this section, the court may assess costs of the**
80 **action, together with reasonable attorney fees determined by the court.**

81 **8. A civil action under this section may not be commenced later than two years**
82 **after the date upon which the claimant first discovered or had a reasonable opportunity**
83 **to discover the violation.**

84 **9. Telecommunications carriers that maintain telephone records of a resident of**
85 **this state shall establish reasonable procedures to protect against unauthorized or**
86 **fraudulent disclosure of such records which could result in substantial harm or**
87 **inconvenience to any customer. For purposes of this section, a telecommunications**
88 **carrier's procedures shall be deemed reasonable if the telecommunications carrier complies**
89 **with the provisions governing Customer Proprietary Network Information in section 222**
90 **of the Communications Act of 1934, as amended, 47 U.S.C. 222 and regulations**
91 **promulgated thereunder.**

92 **10. No private right of action is authorized under subsection 9 of this section.**

93 **11. No provision of this section shall apply to a telecommunications carrier, its**
94 **agents and representatives or agents or representatives, who reasonably and in good faith**
95 **acts under subsection 5 or 9 of this section, notwithstanding any later determination that**
96 **such action was not in fact authorized.**

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